

3.4 Specifications: A specification is a concise statement explaining the type of product or service, the quality level, special requirements in design, performance, delivery and usage. Specifications must not be overly restrictive (locking in a specific vendor and limiting competition) or vague (allowing a vendor to provide a lower than acceptable quality level product or service).

Specifications must not unnecessarily inhibit competition. West Virginia Code § 5A-3-3(10) states that: "The Director shall assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor." Similarly, **West Virginia Code of State Rules**, 148-1-6.5a states that no person may write specifications, or attempt to influence the drafter of specifications, to limit competition, or favor or disfavor a particular brand or vendor.

Specifications used in the procurement process shall be retained with the purchasing file for each purchase order. Written specifications are required for purchases between \$5,000 and \$25,000 at the agency level to ensure vendors are being provided a fair opportunity to quote comparable products.

A good specification should contain language that is the following:

- Clearly understandable to both the buyer and the seller
- Complete
- Concise
- Identifiable wherever possible with some brand or specification already on the market
- Verifiable
- Reasonable
- Legible

No reference may be made in a solicitation to external published specifications without the express, written approval of the Purchasing Director. When external published specifications are referenced in a Request for Quotation or Request for Proposal, a copy of those specifications must be included with the solicitation.

3.4.1 Types of Specifications: There are three (3) types of specifications used separately and/or in combination to communicate requirements for goods and services to the vendor:

3.4.1.1 A "Brand Name(s) or Equal" Specification is based upon **one (1) or more** manufacturer's commodity description(s), model number(s) and quality level. Spending units may not use brand or vendor names to restrict competition; however, if brand names are used to adequately describe a needed commodity or service, the brand or vendor name must be followed by the phrase "or equal" to promote and encourage competition.

A spending unit that uses a brand or vendor name to describe a needed commodity or service must also list in the specifications the mandatory

components of that commodity or service that the reference to a brand or vendor name is intended to capture. A vendor's equality with the brand or vendor name will be evaluated on the basis of the mandatory components only.

Any spending unit request to disqualify a vendor on the grounds that the vendor has bid an unequal product must be accompanied by written justification listing the mandatory component that is unequal and explaining how the product bid is unequal.

For example: A brand name manufacturer's commodity numbers referenced in specifications must be easily identified in a current publication that is available to most vendors and must also include the required features upon which equivalency will be evaluated.

When using a brand name specification, the words "OR EQUAL" must be inserted to inform vendors that alternate bids will be considered. The general name of the items, e.g., air blowers, automobiles, etc., should be listed first; the manufacturer and model number of the item should follow immediately. Literature should be requested to accompany any alternate bid which can verify that the alternate bid complies with the specifications.

3.4.1.2 A Performance Specification is based upon the specific performance needs of the purchaser. The performance specification places less emphasis on how the product is made, and more emphasis on how the product performs.

3.4.1.3 A Design Specification concentrates on the dimensional and other physical requirements of an item being purchased. The design specification is used when the commodity has to be specially made to meet the purchaser's **unique** needs.

Combinations of the above may be used to communicate clear specifications to vendors. A performance specification may refer to a nationally accepted testing procedure for a commodity; a design specification may indicate the physical size and dimension of the commodity; and a brand name or equal specification may be used to indicate a desired quality level.

An agency may not draft specifications to match a vendor's description of its commodity or service to the exclusion of others or draft specifications that are so restrictive that only one desired vendor can meet the requirements without adequate justification for the restrictions. Reduced need for training, maintaining consistency in inventory, staff familiarity, and other similar objectives will not be sufficient to justify restrictions in specifications.

3.4.2 West Virginia Standard Specifications: According to **West Virginia Code §5A-3-5**, the Purchasing Director shall promulgate and adopt standard specifications based on scientific and technical data for appropriate commodities, which shall establish the quality to which such commodities to be purchased and services to be contracted for by the state must conform. These standard specifications, which are prepared and adopted by the Purchasing Division for various products and services, are written with the input

of state agencies and vendors for products and services that are used by many state agencies. By using standard specifications, the state is assured of an acceptable quality that meets the state's needs. These standard specifications shall include information relating to the cost of maintenance and expected life of the commodities, services or printing when the Director determines there are nationally accepted standards for commodities, services or printing.

West Virginia Code of State Rules 148-1- 7.4 provides additional guidance, noting that the state may secure open-end contracts to obtain commodities, services or printing to supply the repetitive needs of the state in the form of statewide contracts, blanket orders or agency contracts. If the Purchasing Director establishes a statewide contract, all spending units covered by the contract are required to use it. The Purchasing Director may grant waivers on a case-by-case basis to a state agency to purchase outside of the mandatory contract; however, the agency must show that one of the following conditions exists:

- Vendor is unable to deliver the commodity or service by the required delivery date, assuming that the agency is not imposing an unreasonable delivery deadline;
- Vendor is unresponsive to ordering requests;
- Vendor has refused to perform.

3.4.3 Preparing Specifications and Purchase Descriptions: Most state agencies have a procurement officer who is responsible and knowledgeable in state purchasing guidelines as well as their own agency procedures. It is important to note that questions from agency personnel relating to purchasing issues should be directed **first** to the respective agency procurement officer rather than directly to the Purchasing Division. If the agency procurement officer needs assistance, they are encouraged to contact the appropriate state buyer in the Acquisition and Contract Administration Section of the Purchasing Division for assistance in preparing specifications. (See **Appendix C**).

- When preparing a **Requisition**, if the agency currently has a contract for the needed commodity or service, submit the existing contract number and expiration date with the **Requisition** when submitting to the assigned buyer in the Purchasing Division. If this is a new contract, also indicate this information to the Purchasing Division buyer. This information will assist the buyer in developing timelines for bidding and acquiring a new contract prior to the expiration of the existing contract.
- The **Requisition** must include the following:
 - Maximum Budgeted Amount: This is the maximum available funding determined by the agency at the time of submitting a Request for Quotations or Proposals to the Purchasing Division. This amount is required on all Purchase Requisitions. For purposes of determining the agency's ability to negotiate, under **West Virginia Code** §5A-3-11a, this amount cannot be changed after bid opening. **NOTE:** On requisitions in wvOASIS, the Maximum Budgeted Amount field does not pre-encumber

or reserve funds in any way. It is primarily used to determine whether negotiations are allowed (when all bids exceed available funds.)

Quantity

The total quantity requisitioned (or an estimated quantity amount based on past usage for an open-end contract) and the unit of measure, such as cases, each, pounds, etc., must be provided.

Type of Purchase

The type of purchase should be identified in the **Requisition**. For additional information on types of purchasing transactions, see **Section 3.7.1**.

Description

The description of the commodity or service should be contained in the specifications. The description shall contain the essential requirements that clarify the quality level or indicate the features that are important to the function of the item/service being purchased.

Make sure the **Requisition** and any attachments are in compliance with the following:

- Appropriate for photocopying
- Neatly typed
- Free of typographical errors
- Approved by an authorized agency representative

The information entered on the requisition is a reflection on the agency and the state of West Virginia. Please insist on high quality work. Improperly completed requisitions or inferior quality will be returned to the agency for correction.

3.4.3.1 Specification Templates: Several sets of templates related procurement transactions have been developed and are mandatory for use by state agencies to streamline processing transactions. The templates relate to such specification types as Catalog Discount Request for Quotation Standard Format, One-Time Purchase Request for Quotation Standard Format and Open-End Request for Quotation Standard Format. Other than in blank spaces where the agency must fill in information as indicated, agencies must not change the language in the templates unless expressively approved by the Purchasing Director. These templates are available on the Purchasing Division's intranet site at:

<http://intranet.state.wv.us/admin/purchase/procedures.html>

3.4.4 Design Services/Consultant: Any individual, corporation, or firm (except as provided by a statewide contract) paid to custom design or write specifications for a modular office system, computer system, construction or any other project or contract shall not be permitted to competitively bid to provide the product or service that was designed. This removes the possibility of the designer developing specifications that

only the designer can meet or restrict another vendor from meeting. This also prevents the appearance of any impropriety, thereby protecting the integrity of the competitive bid process.

3.4.5 Product Testing: Any testing of specific brands of products, which may lead to future purchases restricting competition, must have pre-approval, in writing, by the Purchasing Division.

Agencies should submit a description of the proposed testing with complete details including, but not limited to: the specific brand and names of vendors involved in the test; the brands and vendors that may be excluded in the future; the length and cost of the test; the cost of potential future purchases after the test, etc.

Agencies may call vendors for information or copies of specifications for consideration of a particular brand or manufacturer without jeopardizing the vendor's ability to compete in the bid process as long as the vendor does not receive compensation or any form of favoritism.

3.5 Research the Market: When preparing specifications, it may be necessary to research the market to gain a better understanding of equipment, its technology, compatibility and availability.

3.5.1 Request for Information (RFI): The Purchasing Division recognizes only one (1) formal method for requesting written information from vendors for the purpose of developing a Request for Quotation (RFQ) or a Request for Proposal (RFP). That method is a Request for Information (RFI).

An RFI shall be used at the discretion of the agency or the Purchasing Division; it is not a mandatory prerequisite to the issuance of an RFQ or an RFP. An RFI should be used when appropriate expertise or information is lacking to develop adequate specifications for an RFQ or RFP. This process allows for the assistance of multiple vendors who have expertise and can provide information in the area of concern.

The Purchasing Division is required to issue any and all RFIs. An RFI shall not be used to make an award of a purchase order or contract.

3.5.2 Trade-In: The trade-in process is not delegated to agencies. In any situation where a trade-in is anticipated, the procurement must be bid as a central procurement transaction through the Purchasing Division. The trade-in process consists of multiple steps.

First, any agency desiring to utilize the trade-in process must develop specifications to accompany the **Centralized Purchasing Requisition (CRQS)** requesting that bids include a price for the new item only and prices that reflect the value the bidder proposes to attribute to the trade-in. The agency must receive written approval from the West Virginia State Agency for Surplus Property (WVSASP) to pursue the trade-in option; the approval must be included with the Requisition when submitting to the Purchasing Division.

Second, after the bid opening, the agency must obtain written approval for the trade-in from the West Virginia State Agency for Surplus Property by attaching the bids submitted in response to the solicitation along with any other required documentation. The submission must be with an FD document created in wvOASIS with the disposition method of "trade-in" identified.

Third, if the trade-in is approved by WVSASP, the agency must submit its award recommendation to the Purchasing Division buyer who will ensure that the credit for the trade-in is properly applied on the contract document. If WVSASP approval is not granted, the Purchasing Division will proceed with the award to the lowest responsible bidder without the trade-in option.

Fourth, the agency must then submit documentation to WVSASP verifying receipt of the credit for the trade-in. WVSASP will then verify the application of the credit and complete the retirement. If the original cost of the items to be traded in is less than \$1,000 and is not listed in wvOASIS, the asset must be added to wvOASIS for trade-in purposes.

Only one-for-one trade-ins will be considered and items may be traded only for the same type of item. Trade-ins will not be authorized for items purchased from statewide contracts or sole source vendors, unless it is in the best interest of the state and approved by WVSASP.

It is important to note that the value of the new items for fixed asset purposes is the full value of the new items, including money paid for the asset and the value attributed to the trade in. The wvOASIS system automatically includes the money paid for the asset in the fixed asset system, but it does not automatically account for trade-in value. The agency must create a Fixed Asset Increase document and use that document to add the trade-in value to the new asset.

A trade-in allowance does not allow a state agency to alter or circumvent the purchasing process.

For additional information on trading in equipment, please see the Surplus Property Operations Manual in **Appendix G**.

3.6 Define Sources: In the planning process, it is mandatory that agencies review all internal sources and mandatory resources as detailed below.

3.6.1 Internal Sources, Considerations and Approvals

3.6.1.1 Surplus Property: The West Virginia State Agency for Surplus Property operates a state and federal surplus property program.

The State Property Program consists of property no longer needed within state government agencies which is made available to eligible public and nonprofit organizations. The property may also be made available to the general public through competitive public auctions and sealed bids.

In addition to the state Property Program, a federal Property Program is administered. The program serves all eligible organizations and acts as a clearinghouse by offering new and used equipment at reduced costs for acquisition.

In addition to the availability of surplus property, another function of this program is to approve the disposal of property no longer needed by the agencies, including trade-ins against the purchase of new property.

Agencies do not have authority to dispose of any property regardless of value without written approval from the West Virginia State Agency for Surplus Property. All methods of property disposal **must** be coordinated through Surplus Property.

State agencies are encouraged to refer to the West Virginia Surplus Property Operations Manual (see **Appendix G**) or visit its website at **WVSurplus.gov**.

Any questions concerning the disposal or sale of state surplus property should be directed to the West Virginia State Agency for Surplus Property at the address below:

**West Virginia State Agency for Surplus Property
2700 Charles Avenue
Dunbar, West Virginia 25064**

**(304) 766-2626
1-800-576-7587**

3.6.1.2 Commodities and Services Provided by Correctional Industries: In accordance with **West Virginia Code** §25-7-5, all offices, departments, institutions and agencies of the state which are supported in whole or in part by this state shall purchase, and all political subdivisions of this state may purchase, all articles or products which they require from the commissioner, if those articles or products are produced or manufactured by correctional industries, as provided by article 7 of Chapter 25 of the West Virginia Code. No state office, department, institution or agency may purchase an article or product which correctional industries produces from any other source, unless specifically exempted from the provisions of §25-7-5 pursuant to §25-7-6.

These commodities and services must meet certain quality and price standards which are comparable to open-market sources. Use of Correctional Industries does not require bidding.

In accordance with **West Virginia Code** §25-7-6, exceptions from the mandatory purchase provisions of §25-7-5 may be granted when a correctional industries article or product does not meet the reasonable requirements of the requesting state office, department, institution or agency, or when the requisition cannot be fulfilled because of insufficient supply or other reason. No state office, department, institution or agency may evade the requirements of §25-7-5, or of

§25-7-6, by making insubstantial variations from the characteristics of correctional industries products or articles.

Correctional Industries offers a wide variety of products and services to state agencies. In addition to being the preferred contractor for wooden furniture, it also provides other types of furniture, Braille, welding, engraved signs, mattresses, custom signs, tags, janitorial supplies, linens, seating, detergents, inmate clothing, upholstery and decals. Correctional Industries is the sole source supplier for all printing and quick copy services.

For specific information on available commodities and services, contact Correctional Industries at (304) 558-6054 or visit <http://www.wvcorrectionalindustries.com>.

3.6.1.3 Commodities and Services Provided by Sheltered Workshops: All state agencies are required by **West Virginia Code** §5A-3-10, to purchase commodities and services from sheltered workshops whenever such commodities and services are available and meet certain quality and price standards which are comparable to open-market sources. Use of sheltered workshops does not require bidding for commodities and services included in the WVARF statewide contract. Commodities and services not included in the WVARF statewide contract require competitive bidding.

If the West Virginia Association of Rehabilitation Facilities is unable to provide the requested commodities and services, a written notice will be provided by WVARF advising the agency that their request is unable to be met at that time and competition may be sought in accordance with the state purchasing procedures. For specific information on the sheltered workshops or the available commodities and services, contact WVARF at (304) 766-4894, or visit www.state.wv.us/admin/purchase/swc.

3.6.1.4 Technology: The **West Virginia Code** §5A-6 requires that the Chief Technology Officer (CTO), in conjunction with the Information Services & Communications Division (IS&C) of the Department of Administration, review and approve all data processing procurements for state agencies.

All infrastructure purchases, regardless of dollar value, require CTO approval prior to submission of a request to use any type of solicitation. Since the CTO may require changes by the agency, the Purchasing Division's review of documentation without CTO approval may not be practical. All state entities, with the exception of Constitutional Officers, Higher Education and K-12, shall request approval for, at a minimum, but not limited to, the purchase of servers, storage device, routers, hubs, switches, firewalls, video conferencing and telephone equipment, including PBX system. The applicable infrastructure purchases also include infrastructure software of all types, whether it is e-mail applications, anti-virus software or any other interoperability application.

Different than infrastructure purchases in the previous paragraph, state agencies may procure computer application software and other non-infrastructure

software, as well as IT consulting services with an estimated value of less than \$10,000 without CTO approval, but must provide copies of agency purchase orders to the CTO. All purchases of computer hardware, software and consulting services in excess of \$10,000 must have prior approval of the CTO before it can be processed. Such proposed purchases must be submitted to the Office of Technology for review and evaluation, and the results will be forwarded to the CTO for final approval.

The agency must obtain approval from the CTO prior to submitting purchasing transactions to the Purchasing Division.

3.6.1.5 Other Considerations: Certain commodities or services may have additional statutory, regulatory, or other requirements that must be considered when preparing specifications.

For example, Healthcare contracts are subject to HIPAA and require the inclusion of a Business Associate Addendum. Construction contracts require a contractor's licenses, drug free workplace compliance; and all construction contracts require a certificate of insurance, Workers' Compensation coverage, unemployment compensation and bonds.

Recycled Products: In accordance with *West Virginia Code* §22-15A-21, all agencies and instrumentalities are encouraged, to the maximum extent possible, to purchase recycled products.

Recycled paper products shall be given a price preference of ten percent, provided, however, that priority shall be given to paper products with the highest postconsumer content. Agencies should remove any language in the specifications that discriminate against recycled products. The use of disposable and single-use products should be eliminated, to the maximum extent possible. Compost in all land maintenance and landscaping activities are to be used by state agencies and the use of composted or deep stacked poultry litter products, certified by the Commissioner of Agriculture as being free from organisms that are not found in poultry litter produced in this state, have priority unless determined to be economically unfeasible by the agency.

Required Attachments: A *Purchasing Affidavit* is a required attachment on written Request for Quotations (RFQ) for all purchases exceeding \$5,000. In addition, the *Vendor Preference Certificate* is attached to all RFQ's with the exception of construction projects (See **Appendix B**).

3.6.2 Mandatory Contracts

3.6.2.1 Statewide Contracts: *West Virginia Code* §5A-3-5 and *West Virginia Code of State Rules* §148-1-6.5.b. authorize the Purchasing Director to promulgate and adopt standard specifications based on scientific and technical data for appropriate commodities and services, which establishes the quality to which such commodities and services to be purchased and services to be contracted for by the state must conform. These standard specifications are used

to establish statewide contracts for commodities that are needed on a repetitive basis and are established for the benefit of state spending units. (See **Appendix E**).

If the Director establishes a statewide contract, agencies are required to purchase the commodities and services available on that contract from the contract holder. Agencies may request a waiver from a statewide contract if the vendor is unable to deliver the commodity or service by the required delivery date, assuming that the spending unit is not imposing an unreasonable delivery deadline, the vendor is unresponsive to ordering requests, or the vendor has refused to perform. When approval waiver is granted, it must be retained by the agency with the purchase order file for each transaction to which the approval applies.

3.6.2.2 Agency Open-End Contracts (Over \$25,000): Upon request by the state agency, the Purchasing Division establishes agency open-end contracts through competitive bid for commodities and services needed on a repetitive basis. Once established, the agency is required to use this contract. Agencies may request a waiver from an open-end contract if the vendor is unable to deliver the commodity or service by the required delivery date, assuming that the spending unit is not imposing an unreasonable delivery deadline, the vendor is unresponsive to ordering requests, or the vendor has refused to perform.

3.7 Preparation of the Requisition

3.7.1 Types of Transactions: Identified below are six (6) types of purchases: one-time or single purchases; open-end contracts; professional service contracts; emergency purchases; lease and lease-purchases; and sole source purchases.

3.7.1.1 One-Time/Single Purchase: This method is used to purchase commodities or services that are not considered repetitive. State agencies must submit a **Requisition** to the Purchasing Division.

3.7.1.2 Open-End Contracts: The Purchasing Division issues both statewide contracts and agency open-end contracts. The Purchasing Division, at its discretion or upon request of any state agency, may establish a contract for specific commodities and services required. These open-end contracts are convenient for recurrent purchases. For agency open-end contracts, the state agency determines its specific needs and submits a **Requisition** to the Purchasing Division for competitive bid. Open-end contracts are processed as master agreements in wvOASIS.

After the contract is established, a "delivery order" may be required to order commodities or services.

3.7.1.2.1 Delivery Orders: All delivery orders must reference the complete open-end contract number.

Not Requiring Purchasing Division Approval: Most delivery orders do not require advance approval from the Purchasing Division. All delivery orders of \$250,000 or less may be released directly to the vendor by the agency in the form of an **Agency Delivery Order (ADO)**, unless ordering instructions contained in the contract require Purchasing Division approval. In most cases, open-end contracts will contain ordering instructions with additional details about ordering. Agencies are required to follow any such instructions contained in open-end contracts.

Requiring Purchasing Division Approval: Any agency issuing a delivery order on an existing open-end contract that exceeds \$250,000 must process the delivery order as a **Central Delivery Order (CDO)**. No agency shall issue a series of delivery orders anticipated to cost \$250,000 or less to circumvent this requirement. Delivery orders of \$250,000 or less should be processed as an ADO as described in the preceding paragraph.

As noted above, some contract delivery orders, in any amount, require the advance approval of the Purchasing Division. When this is a requirement in the contract, it will be stated in the ordering procedures.

Agencies should always refer to the ordering procedures on all open-end or statewide contracts for proper instructions prior to attempting to issue a delivery order.

3.7.1.2 Professional Service Contracts: These contracts are used to obtain specific professional expertise which is not available within state government. Examples of professional services may be legal, architectural, medical, dental, engineering and other consultant services.

3.7.1.3 Emergency Purchases: In accordance with **West Virginia Code** §5A-3-15, purchases may be necessary when unforeseen causes arise; however, emergency purchases are not used for hardship resulting from neglect, poor planning, or lack of organization by the spending unit.

An emergency purchase is a purchase which can be made only if and after the Purchasing Director, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities or services be immediately purchased by a state spending unit and the Purchasing Director in writing authorizes such a purchase. A report of any such purchase, together with a record of competitive bids upon which it was based, is to be submitted to the Purchasing Director.

Agencies must first examine mandatory contracts and other internal sources for availability of the product or service and utilize such. For information on mandatory contracts and internal sources, see **Section 3: Acquisition Planning, 3.6 Define Sources**.

- **Declared State of Emergencies by Governor:** In accordance with §15-5-6 of the *West Virginia Code*, the governor has the authority to suspend certain laws, rules and/or regulations regarding the acquisition of commodities and services by public organizations in the event the governor declares an emergency. When emergency needs relate directly to the declared state of emergency, these procedures are available and outlined on the Purchasing Division's website at:

<http://www.state.wv.us/admin/purchase/EmergencyProcs2.html>

- **Emergency Purchases \$25,000 or Less:** A minimum of three (3) bids, if possible, should be obtained. Original written bids and written agency justification shall be attached to the agency file. Agency Master Terms and conditions should also be included in requests for bids in emergency situations to the extent that the emergency permits. Purchasing Division approval is not required for emergencies \$25,000 or less at the agency delegated level.
- **Emergency Purchases over \$25,000:** When an emergency situation occurs during normal business hours, written approval of the Purchasing Director or his/her designee must be obtained prior to making a purchase or execution of any work. A written explanation from the primary state agency designated procurement officer must be provided immediately. If an emergency occurs after business hours, on a holiday or weekend, the primary state agency designated procurement officer may proceed with the emergency purchase and provide immediate written justification of the action to the Purchasing Director on the first working day following the emergency.

A minimum of three (3) bids, if possible, shall be obtained. The awarded vendor must be properly registered with the Purchasing Division. As soon as the emergency situation allows, the original written bids or the proposed contract with the vendor, whichever applies, shall be attached to the **Requisition**, and submitted to the Purchasing Division with a letter of justification or a copy of the Director's or designee's written emergency approval for contract review and approval by the Purchasing Division and the Attorney General's office (as to form). Depending upon the amount of the emergency purchase, Agency Master or Purchasing Master Terms and conditions and other relevant documentation, should also be included in requests for bids in emergency situations to the extent that the emergency permits. Emergency contracts are subject to the same terms and conditions as traditional contracts so it is important to notify vendors of the requirements contained in the terms and conditions as early in the process as possible. The Purchasing Division recognizes that certain emergency situations do not allow time for written bid requests. In those situations, it is understandable that terms and conditions will not be addressed until after the emergency situation has been resolved. To access the Purchasing Master Terms and Conditions and Agency Master Terms and Conditions, please visit the Purchasing Division's website at:

<http://www.state.wv.us/admin/purchase/arc/default.html>

3.7.1.4 Sole Source Procurement: In a sole source situation, competition is not available. The commodity or service is only available from one (1) source.

Regardless of the dollar amount, written justification is required with the following criteria to be used by the Purchasing Division to determine validity of the request:

- (a) The item cannot be obtained through ordinary purchasing procedures;
- (b) The item is unique and not available from any other source; or
- (c) The item is available from a State spending unit or other institution with preference under the West Virginia Code, provided the price, availability, and quality are comparable to those in the open market.

Agencies are encouraged to solicit competition rather than process a sole source request. The Purchasing Director has authority to reject sole source requests whenever competition is believed to be available.

3.7.1.4.1 Sole Source Procurement – \$25,000 or Less: If an item is unique and possesses specific characteristics that are available from only one source, an **Agency Purchase Order** must be completed.

A written, signed quotation from the sole source vendor and written justification from the primary state agency designated procurement officer for purchases over \$2,500 must be obtained. Signed fax or electronic quotations are acceptable. A specific description, Agency Master Terms and Conditions, delivery terms and price must be included in the signed quotation. *(A quotation may also be accepted on the vendor's letterhead).*

The spending unit must maintain written documentation at their location certifying that no other sources are available and that the spending unit exhausted all attempts to secure competition.

3.7.1.4.2 Sole Source Procurements More than \$25,000: Whenever an item is unique and possesses specific characteristics that the agency views as being available from only one source, the primary state agency designated procurement officer is to submit to the Purchasing Division a formal request in writing, in accordance with **West Virginia Code** §5A-3-10c.

This written request, **Sole Source Request for Consideration** (WV-65), must be completed in its entirety (with the vendor quote and any other necessary attachments) and include the basis for the sole source procurement and the specific efforts made to determine the availability of other sources.

The **Purchasing Affidavit, Non-Conflict of Interest Certification**, an electronic copy of the language for the sole source determination advertisement (See **Appendix N**), and the Purchasing Master Terms and

Conditions should be submitted after the **Sole Source Request for Consideration** (WV-65) has been approved by the Purchasing Director and returned to the agency. The agency shall not negotiate any of the terms and conditions with the vendor until the Purchasing Division has reviewed and approved the potential purchase for advertisement.

The Purchasing Division will advertise the potential sole source purchase with the respective terms and conditions in the **West Virginia Purchasing Bulletin** to ensure no other vendor may provide this commodity or service.

According to the **West Virginia Code of State Rules**, should the advertisement cause inquiry and concern or requests to bid by prospective bidders or other interested parties, the Purchasing Director may: (a) reject the sole source request and require the spending unit to submit a requisition for public advertisement and formal bidding; (b) accept the request and approve the sole source; or (c) take other action as necessary.

Should no vendor respond to the sole source advertisement, the agency's **Requisition** will be processed as a sole source purchase. A signed bid quotation from the sole source vendor must also be submitted with the completed **Requisition**. A specific description, terms, FOB shipping point, and price must be included in the signed quotation. (*The quotation may be on the vendor's letterhead*).

Sole Source purchases require an original signed vendor quotation, a signed letter of justification from the agency and, if the vendor offers alternative terms and conditions, an **Agreement Addendum (WV96)**.

If a vendor(s) does respond, indicating they can provide the commodity or services advertised and the Director determines the matter should be bid, the sole source **Requisition** will be canceled and the agency must resubmit a new **Requisition**, with detailed specifications. The Purchasing Division will process this requisition competitively and advertise in the **West Virginia Purchasing Bulletin** accordingly. Backdating transactions resulting from sole source determination or any other documents shall not be honored.

The Purchasing Director must issue prior approval or disapproval for the purchase of used equipment directly from the vendor without competitive bids. If disapproved, the Purchasing Director must return the request to the agency and direct another method of purchasing. Approval to purchase used equipment using this purchasing method is contingent upon meeting all requirements applicable to a sole source procurement.

3.7.2 Terms and Conditions: Terms and conditions are included to express the intent of the State of West Virginia. Purchasing Master Terms and Conditions are a part of every written solicitation issued through and contract awarded by the Purchasing

Division. Agency Master Terms and Conditions are also available for use by state agencies utilizing their delegated purchasing procedures. Both the Agency Master and Purchasing Master Terms and Condition may be found in the Agency Resource Center of the Purchasing Division's website at <http://www.state.wv.us/admin/purchase/arc>. Information and assistance in the preparation or use of additional special terms and conditions not contained in this manual may be obtained by contacting the Purchasing Division.

3.7.2.1. Life of Contract: Contracts should be issued for no more than a twelve (12) month period or cite a specific time for completion for the project or service. A solicitation for a contract that includes an option on the part of the state to extend or renew the contract for an additional period may be advantageous and may be considered. In instances where there may be larger upfront costs or for extremely complex programs or projects where an initial contract term in excess of 12 months is needed, the agency must request approval of the longer term and must provide justification. If price adjustments are permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. All contracts should be reviewed during the contract period to determine if the need still exists for the commodities or services, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory.

3.7.2.2 Renewals: The standard terms and conditions used by the Purchasing Division indicate a specified date, on which the contract becomes effective, and extends for a period of one (1) year. This contract may be renewed upon the written consent of the agency, and the vendor, with approval of the Purchasing Division and the Attorney General's office, as to form.

Any request for renewal should be submitted to the Purchasing Division 30 days prior to the expiration date of the initial contract term or appropriate renewal term. A contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of a contract is usually limited to three successive one year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed 36 months in total. Automatic renewal of any contract is prohibited. Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions. Agencies are not permitted to extend any contract beyond the time that is stated in the contract.

Unless specific provisions are stipulated in the contract document, the terms, conditions and pricing established are firm for the life of the contract.

A letter of justification must also be included, stating pertinent reasons for its recommendation to renew the existing contract. These factors include, but are not limited to, vendor performance, market conditions and other analytical measures which indicate that renewing the contract is in the best interest of the state.

3.7.3 Bid Opening Date and Time: When establishing an opening date and time, buyers and/or agency personnel should allow for holiday mail disruptions as well as time required for vendors to respond. In wvOASIS, the bid opening date and time are referred to as the "bid closing."

3.7.4 Evaluation Period: After bids are opened, a review and evaluation of the bids received is required. The Purchasing Division may immediately award certain open-end contracts without the necessity of the agency's review when the Purchasing Division believes this action is in the best interest of the state of West Virginia. However, when an award has not been immediately made by the Purchasing Division, state agencies may be involved in the evaluation process by reviewing bids, making recommendations and providing justification.

State agencies are encouraged to review the bids when posted online at the Purchasing Division's website. Paper copies will only be provided to the agencies if the bids are too large to post electronically.

If the state agency is involved in the evaluation process, a recommendation for award must be received in the Purchasing Division within five business days of the bid opening date, with the exception of Request for Proposals (RFP) and Expressions of Interest (EOI). RFP and/or EOI recommendations for award must be received within 10 business days.

Failure to comply with these established deadlines may result in the agency requisition being cancelled, unless extenuating circumstances exist. It is the responsibility of the agency to provide justification for keeping a requisition open after these time frames.

The Purchasing Division requires all evaluators and advisor(s) of solicitations, despite the type of transaction, and the agency procurement officer, to sign a **Certification of Non-Conflict of Interest**, in accordance with the **West Virginia Code §5A-3-31** (see **Appendix B**). By signing this certification, the evaluator(s), advisor(s) and agency procurement officer attest that: (1) his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the Purchasing Division. Agency procurement officers should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members.

Please note that this requirement applies to all transaction types. This certification must be submitted at the following time frames:

- Requests for Proposals (RFP) / Expressions of Interests (EOI): Agencies must submit this certification prior to beginning the evaluation of an RFP or EOI.
- Requests for Quotations and All Other Transaction Types: The evaluator(s) must sign the Certification for Non-Conflict of Interest and submit, along with the recommendation for award, to the Purchasing Division.

This certification applies to all transactions processed through the Purchasing Division. In addition, it is required for agency delegated purchases exceeding \$2,500. Agencies may adopt this policy at their discretion for purchases \$2,500 or less.

3.7.4.1 Blackout Period: In accordance with the *West Virginia Code of State Rules* Section 148-1-6.6b, from the time a requisition is submitted to the Purchasing Division for public advertisement until an award is made, evaluators and spending unit personnel are not permitted to communicate with vendors about the solicitation or any component thereof without prior approval from the Purchasing Division. All communication regarding the solicitation must be directed to the Purchasing Division until an award has been made. Nothing in this subsection, however, shall prevent the evaluators and spending unit personnel from communicating with a vendor about existing contracts or other matters unrelated to the solicitation in question.

3.5 Identify Possible Vendors: In order to achieve the goal of competitive bidding, a minimum of three (3) bids is required, when possible.

Locating vendors selling a particular product or service can be performed in a number of ways, including:

- Reference sources, such as the telephone book's yellow pages and other business listings;
- Supplier's catalogs, which not only offer local distributors but provides descriptive information on their products and current technology of the market;
- Meeting with business representatives;
- wvOASIS enterprise resource planning system; and
- Utilizing the Internet.

Agencies should suggest to the Purchasing Division buyer at least three (3) potential vendors who may be qualified to bid on the solicitation. It is important to include the vendor's company name, contact person, mailing address, telephone number, fax number and email address. Vendors are encouraged to create an account in the Vendor Self Service (VSS) portal in wvOASIS and register for specific commodities that reflect what they sell in order to be automatically notified of upcoming bid opportunities.

3.6 Federal Funding Requirements: Any requisition utilizing federal funding which includes special requirements in addition to or different than normal purchasing requirements must be identified when submitted. All special requirements, particularly regarding advertising, must be provided in a separate memorandum and attached to the requisition.



PROCEDURES HANDBOOK

SECTION 4: VENDOR REGISTRATION REQUIREMENTS

4.0 VENDOR REGISTRATION REQUIREMENTS:

This section will address the requirements established for vendors who wish to do business with the State of West Virginia.

4.1 Requirements: Vendors doing business with the State of West Virginia must be registered through the Vendor Self-Service portal of the state's wvOASIS enterprise resource planning system. The Vendor Self-Service portal may be accessed at www.wvOASIS.gov. Vendor may also register by completing a **Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application (WV-1 or WV-1A)** and submitting to the Purchasing Division, in accordance with **West Virginia Code §5A-3-12**.

The **West Virginia Code of State Rules, CSR148**, states that, all vendors must register with the Purchasing Division prior to being awarded a contract, except that the following categories of vendors are exempt from this registration requirement.

(1) Purchasing card vendors providing travel related services are not required to register with the Purchasing Division.

(2) Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit are not required to register with the Purchasing Division.

(3) Any company or corporation, or subsidiary of the company or corporation, listed on any nationally recognized stock exchange is not required to register with the Purchasing Division.

It is the agency's responsibility to make sure vendors are properly registered in wvOASIS.

4.1.1 WV-1: Vendors are encouraged to register through the Vendor Self-Service portal through the wvOASIS system. A vendor may choose to submit a paper form in lieu of registration through wvOASIS. The WV-1 form should be completed by vendors that receive purchase orders or contracts for competitive commodities or services exceeding an aggregate amount of \$2,500. The **WV-1** form requires payment of the \$125 annual fee. The vendor's check and the **WV-1** form are to be mailed directly to the Purchasing Division. Upon payment of this fee, the vendor will receive access to the **West Virginia Purchasing Bulletin**, which contains upcoming bid opportunities and downloadable bid documents.

If the agency receives the WV-1 form (without payment) and chooses to input the info into wvOASIS in a VCC document, the account should be on "Prevent New Orders" hold and the Registration Date fields should be left blank under the "Disbursement Options" tab. The WV-1 should then be forwarded to the Purchasing Division.

4.1.2 WV-1A: Vendors are encouraged to register through the Vendor Self-Service portal through the wvOASIS system. A vendor may choose to submit a paper form in lieu of registration through wvOASIS. The WV-1A form should be completed by vendors that receive purchase orders or contracts for sole source or competitive commodities or services of an aggregate amount of \$2,500. or less in any one (1) fiscal year.

It is imperative that agencies include their agency name and mailing address on the front page of the WV-1A form prior to sending it to the vendor. The vendor is to complete Part I of the form and return to the requesting agency.

The agency procurement officer should review the form for completeness and legibility, complete Part II, sign the form and forward to the Purchasing Division for processing. All incomplete or illegible **WV-1A** forms will be returned to the agency procurement officer for disposition. Incomplete **WV-1A** forms received in the Purchasing Division without the requesting agency name on the front page of the form and with Part II not completed will not be processed but retained temporarily in a pending file. Part II of the **WV-1A** form must be completed by the agency and signed by the agency procurement officer. This form must still be submitted to the Purchasing Division even when the agency inputs the information into wvOASIS through a VCC document.

Agencies should make certain that vendors are not already registered with the Purchasing Division prior to requesting a vendor to become registered. Agency personnel not having access to the wvOASIS vendor file should contact their agency procurement officer, rather than the Purchasing Division, for vendor registration verification.

Agencies are responsible to provide the appropriate **Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application** to vendors with which it wishes to do business, whether the business is registering as a new vendor or updating its vendor registration information with the Purchasing Division. Agencies should always furnish the vendor the name and telephone number of an agency contact person in the event the vendor has questions for the agency. **Please print the form out directly from the Purchasing Division's website for each vendor, ensuring the most recently-updated version of the form is being distributed and used.**

Vendor Registration and Disclosure Statement and Small, Women-, and Minority-owned Business Certification Application (WV-1 and WV-1A) can be downloaded from the Purchasing Division web site at:
(www.state.wv.us/admin/purchase/vrc/pforms.htm).

4.2 Vendor Fee: According to the **West Virginia Code of State Rules, CSR148**, all vendors shall pay to the Purchasing Division, an annual registration fee of \$125 prior to being awarded a contract, except that the following categories of vendors are exempt from this requirement.

(1) Purchasing card vendors providing travel related services are not required to pay the registration fee.

(2) Purchasing card vendors receiving an aggregate total yearly payment less than \$25,000.00 from a spending unit are not required to pay the registration fee.

(3) Vendors receiving orders for goods or services of \$2,500 or less, regardless of payment method, are not required to pay the registration fee.

(4) Vendors providing a good or service under a sole source solicitation are not required to pay the registration fee. The fee is considered waived by the Director for all sole source providers.

(5) Any vendor can be exempted from paying the registration fee if the Director determines that waiving the registration fee would be in the best interest of the State of West Virginia. The Director has determined that waiving the registration fee in the following two instances is in the best interest of the State.

Government Entities-Registration: All state agencies, cities, counties, municipalities and political subdivisions doing business with the state must register using their TIN. Only applicable information needs to be provided. No fee is required.

Vendors Offering Commodities and Services Under Section 9 - Vendor registration fee is waived and, therefore, not required for a vendor providing commodities or services under only Section 9 of the ***Purchasing Division Procedures Handbook***. A vendor that provides commodities or services under other procurement methods and under Section 9 is required to pay the registration fee.

Companies, corporations or persons having multiple outlets for their commodities or services and are all operating under the same TIN (Taxpayer Identification Number) must pay one \$125 annual fee.

4.3 Vendor Hold: Vendors not exempt from paying the \$125 annual fee will be placed on 'prevent new order status' until payment of the fee is received.

In order for agencies to know which vendors are eligible to receive purchase orders, the "Prevent New Orders" feature of wvOASIS is used. Vendors with "Prevent New Orders" status cannot receive purchase orders through wvOASIS. However, if the statewide aggregate amount for this vendor is under \$2,500, and the transaction does not cause spend to this vendor to surpass that threshold, a transactional exemption code for the agency from the VNREGEX table can be utilized for processing the award document. Statewide spend to a vendor can be researched through the VISTA system. Use of any transactional exemption code from VNREGEX is tracked and recorded for use by the Purchasing Division Inspection Unit.

Agencies wishing to purchase competitive items from vendors with the "Prevent New Orders" status should inform such vendors that the vendor registration fee is required and refers them to the Purchasing Division website for payment and registration procedures.

Vendors will be removed from "Prevent New Orders" status when upon review and confirmation the vendor has paid the fee and has provided the required disclosure of information or if a WV-1A is submitted exempting the vendor from paying the fee. These actions must be submitted to and approved by the Purchasing Division. The "Prevent New Orders" hold will not be removed for vendors exempt from paying the fee if the vendor's aggregate payment amount remains under \$2,500 for the current fiscal year. A transactional exemption code must be used in the wvOASIS award document.

4.4 Small, Women-, and Minority-owned Business Certification: As required by *West Virginia Code* §5A-3-59, the West Virginia Purchasing Division incorporated the Small, Women-, and Minority-Owned Businesses (SWAM) Certification Application as part of the ***Vendor Registration & Disclosure Statement and Small, Women, & Minority-Owned Business Certification*** (WV-1 and WV-1A forms). As a result, vendors may apply to become certified if they fall within the business categories defining a small, women-, and minority-owned business. Vendors are encouraged to add this information through Vendor Self-Service in the "Business Type" portion of their wvOASIS vendor/customer account.

State agencies may view the list of currently approved SWAM vendors at the Purchasing Division's website at <http://www.state.wv.us/admin/purchase/VendorReg.html>. Agencies are encouraged to first review this information in VCUST under the "Business Type" tab in the Document Navigator of the vendor/customer account in wvOASIS.

West Virginia Code of State Rules §148-2-1 et seq. requires vendors to re-certify every two years in order to continue compliance. The recognized designations for SWAM include:

4.4.1. Minority-owned Business, which means a business that is at least fifty-one percent owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least fifty-one percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

A "minority individual" means an individual who is a citizen of the United States or a noncitizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

African American means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

Asian American means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, including, but not limited to, Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

Hispanic American means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

Native American means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

4.4.2. Small Business means a business, independently owned or operated by one or more persons who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, which, together with affiliates, has two hundred fifty or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

4.4.3. Women-owned Business means a business concern that is at least fifty-one percent owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least fifty-one percent of the equity ownership interest is owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law.

Frequently-asked questions about the SWAM Certification Program may be found at:

http://www.state.wv.us/admin/purchase/VendorRegFAQ.html#SWAM_faq

As an agency requirement of the SWAM procurement certification, **West Virginia Code** §5A-3-59 (b) requires state agencies to submit annual progress reports on small, women- and minority-owned business procurements to the Purchasing Division of the Department of Administration.

To assist agencies in collecting and maintaining this data, the Purchasing Division created a SWAM Reporting Tool, which is available on the Purchasing Division's intranet under *Processes and Procedures*. This intranet page may be accessible at the following link:

<http://intranet.state.wv.us/admin/purchase/procedures.html>

At the end of each fiscal year, this Excel spreadsheet must be completed noting all contracts or purchase orders issued to SWAM vendors. The information to be noted includes the fiscal year, vendor name, wvOASIS number, contract/purchase order number, description, total amount, and date of award. This report may be submitted electronically to the Purchasing Division through the ***purchasing.requisitions@wv.gov*** e-mail account.

Should an agency purchaser receive any questions relating to the vendor registration procedures or the SWAM certification, the vendor should be directed to the Purchasing Division's Vendor Registration webpage which focuses on these programs. This webpage may be accessed directly at:

<http://www.state.wv.us/admin/purchase/VendorReg.html>



PROCEDURES HANDBOOK

SECTION 5: AGENCY DELEGATED ACQUISITION PROCEDURES (Purchases \$25,000 or Less)

5.0 AGENCY DELEGATED ACQUISITION PROCEDURES

5.1 Definition of Authority: In accordance with the *West Virginia Code of State Rules*, the Purchasing Division has delegated the ability to process procurements of \$25,000 or less to state agencies. This means that state agencies may make purchases of commodities or services in the amount of \$25,000 or less without processing a formal **Requisition** through the Purchasing Division. The delegated authority is further stratified into three categories of procurement discussed in more detail in **Section 5.1.1** below.

It is expected that procurements made under delegated authority will mirror, to the greatest extent possible, formal procurement procedures. It is further expected that the forms used in the bidding process will be the most recent version approved by the Purchasing Division, which are available on the Purchasing Division's Internet and intranet sites.

Amounts spent with vendors are viewed comprehensively. State agencies should continuously monitor their expenditures with vendors to ensure that the total amount spent with a given vendor, within any 12-month period, does not exceed an applicable bid threshold without the proper level of documentation and bidding.

No agency shall issue a series of requisitions to circumvent the \$25,000 threshold. Violation of the \$25,000 threshold is commonly referred to as "stringing," and is prohibited by law. Instances of stringing must be reported to the Legislature.

As an example, an agency will have exceeded the \$25,000 limit in each of the following scenarios:

1. Agency makes a one-time payment of \$25,000.01 or more to a single vendor within a twelve (12) month period.
2. Agency makes multiple payments to a single vendor that aggregate to \$25,000.01 or more within a twelve (12) month period.
3. Agency makes multiple payments to multiple vendors for the same commodity or service that aggregate to \$25,000.01 or more within a 12 month period.
4. Agency makes monthly lease payments of \$2,083.33 or more for twelve (12) consecutive months.

The twelve (12) month period begins with the effective date of the contract. Purchase orders and/or contracts which are renewed or extended for a period of one (1) year and meet one (1) of the above conditions shall also be considered as having met the \$25,000 limitation requirement.

State agencies are encouraged to use the State Purchasing Card as a payment method for purchases, whenever possible, in accordance with State Purchasing Card guidelines.

If an agency fails to comply with the procedures and requirements established for purchases of \$25,000 or less, the Purchasing Director has the ability to:

- Suspend or reduce purchasing authority for that spending unit;
- Require the spending unit to provide additional reports and documentation relating to purchases of \$25,000 or less for Purchasing Division review;
- Require the agency to submit to additional oversight that the Purchasing Director deems appropriate; or,
- Require that agency personnel responsible for purchases of \$25,000 or less participate in remedial training provided by the Purchasing Division.

Most state agencies have a procurement officer who is responsible and knowledgeable in state purchasing guidelines as well as their own agency procedures. It is important to note that questions from agency personnel relating to purchasing issues should be directed **first** to the respective agency procurement officer rather than directly to the Purchasing Division. If the agency procurement officer needs assistance, they are encouraged to contact the appropriate state buyer in the Acquisition and Contract Administration Section of the Purchasing Division for assistance in preparing specifications. (See **Appendix C**).

Prior to seeking competitive bids, agencies must first check the following mandatory contracts or internal resources: statewide contract or agency open-end contract existing for the commodity or service, Surplus Property, Correctional Industries and the West Virginia Association of Rehabilitation Facilities. If the product/service is available from one of these sources but that source is not able to supply the product/service, a waiver must be obtained and retained with the purchase order file for each transaction to which the waiver applies. A vendor preference is required for agency delegated purchases. For more details regarding this preference, please see **Section 6.3**.

5.1.1 Purchases \$2,500 and Less: Competitive bids are not required, but are encouraged when possible.

5.1.2 Purchases \$2,500.01 to \$5,000: A minimum of three (3) **verbal** bids are required, *when possible*, and the lowest bid meeting specification must be awarded the purchase order/contract. All bids must be present in the file.

Bids shall be documented and recorded for public record. (See **Appendix B for Verbal Bid Quotation Summary**, WV-49). A wvOASIS procurement award document is required for purchases exceeding \$2,500. Awards are to be made only to vendors who

are properly registered with the Purchasing Division. Signed fax bids or electronic bids are acceptable. Screen prints from Internet sites are not acceptable as a valid bid. A "no bid" is not considered a bid.

5.1.3 Purchases \$5,000.01 to \$25,000: A minimum of three (3) **written** bids are required, *when possible*, and the lowest bid meeting specification must be awarded the purchase order/contract. All bids must be present in the file.

An **Agency Request for Quotation** should be used for documenting and making these requests. In all cases, state agencies must attempt to obtain at least three (3) written bids for a product or service. A "no bid" is not considered a bid. The date and time of the bid opening shall be published on the Request for Quotation. A wvOASIS procurement award document is required. Signed fax bids or electronic bids are acceptable. Screen prints from Internet sites are not acceptable as a valid bid.

A vendor choosing to submit a bid or a written change to a bid by electronic transmission accepts full responsibility for transmission and receipt of the bid or written change to a bid. The state accepts no responsibility for the unsuccessful and/or incomplete transmission of bids by electronic transmission.

5.2 The Bid Process: The agency delegated purchasing process requires that the agency take certain steps to complete the purchasing cycle after the acquisition planning process. These steps are explained below:

5.2.1 Solicitation of Bids: In order to achieve the goal of competitive bidding, a minimum of three (3) bids is required, when possible. For agency delegated purchasing (procurements \$25,000 or less), care must be taken to solicit vendors capable of providing the necessary products or services.

For procedures relating to technology purchases, visit **Section 3: Acquisition Planning, 3.6.1.4 Technology**.

5.2.1.1 Requests for Quotations: The Request for Quotation (RFQ) should be used to acquire all tangible property (i.e., equipment, supplies, etc.). The RFQ is required for all purchases between \$5,000.01 and \$25,000. Exceptions to this requirement may be granted by the Purchasing Director.

An RFQ consists of:

- (1) a detailed description of, or specification for, the item(s) being purchased;
- (2) delivery date, if required;
- (3) bid price per unit of the item(s);
- (4) any applicable maintenance; and
- (5) quantities of all items.

Each item should be identified by a model number or some other specific identification. Prices cannot be altered after bids are opened. The RFQ must have an established date and time for the bid opening, after which bids will no longer be accepted. All bids should be stamped with the date and time of receipt.

5.2.2 Evaluation of Bids: Bids are received, opened and examined by the agency to ensure compliance with all specifications and determination of the lowest responsible bidder. Bids shall be sealed until the date and time set for the bid opening, which shall be open to the public. Agencies are responsible for making bids immediately available to the public.

While bidder information and amount bid are available for public inspection at this time, agency personnel should not discuss award scenarios with the public during the evaluation period. The complete contract file is considered public record and is available to the public after the award of the contract. For guidance relating to the release of contract information, please refer to **Section 1.7**.

5.2.2.1 Additive / Alternative Options (Add-on or Deduct): In construction contracts, there are projects for which alternative options may be requested of the participating bidders. Depending upon funding resources, these options may be included in the evaluation of the bids. When preparing the specifications, agency purchasers must put the alternatives in the order of importance to the agency, with the first alternative being the most essential to the project should additional funding be available. Additives / alternatives must be awarded in the order listed.

5.2.3 Award Process: After the evaluation of all bids by the agency personnel, an award is made to the lowest responsible bidder who meets the specifications.

If an award is made to other than the lowest bidder, a detailed justification as to why the lowest bidder was not awarded the contract must be written and retained for public record and inspection. The justification must be signed by the evaluator(s) and retained as part of the bid file.

All contracts should be entered into for a firm, fixed price per unit of goods or service. In such cases where the nature of the procurement prohibits a firm, fixed price, a detailed written justification must be included in the file.

Purchases made under Agency Delegated authority are processed at the agency level. Therefore, requisitions, purchase orders or other documentation should be retained by the agency and not forwarded to the Purchasing Division. A public record of all purchasing transactions must be kept on file at the agency location, and subject to inspection at the discretion of the Purchasing Division. This file must contain any verification checks not automatically performed in wvOASIS; Certificate of Non-Conflict of Interest; specifications used for the bidding process, and any and all attempts to obtain competitive bids.

Prior to an award, a vendor must be in compliance with the following requirements and, if applicable, the agency shall retain documentation verifying compliance in the file:

- Vendor registration process (must be registered and the fee paid, if applicable). The registration process includes having the proper disclosure of information in the wvOASIS vendor/customer account, such as the Owner/Officer Information and Banking Information listed under the "Disclosures" tab. It is also recommended that the Finance Division have a current W-9 on file for the vendor. This is indicated under the "Hold Payment" portion of the "Disbursement Options" tab of the wvOASIS vendor/customer account;
- In accordance with the **West Virginia Code** §21A-2-6, verification of current unemployment fee status and Workers' Compensation coverage is required to ensure the vendor is not in default with Workers' Compensation and Employment Compensation. **wvOASIS automatically verifies compliance prior to award;**
- Verification that the vendor is not debarred by the federal government. wvOASIS automatically verifies this federal compliance prior to award. Additionally, the Purchasing Division maintains a list of vendors declared as debarred by the state of West Virginia, which may be accessed at:
www.state.wv.us/admin/purchase/Debar.html. Agencies must verify this compliance prior to award;
- In accordance with the **Code of State Rules** 148 CSR 6.1.e, the vendor must be licensed and in good standing with any and all state and local law and requirements, including proper registration and good standing with the Secretary of State's office and the State Tax Department, regardless of payment method. To search for a business or corporation with the Secretary of State's office, visit <http://apps.sos.wv.gov/business/corporations>. **Agencies must verify this compliance prior to award;**
- **Purchasing Affidavit** (required on all contracts exceeding \$5,000); and,
- **Agreement Addendum (WV-96)** (required when vendors submit alternate terms and condition with their bid) (See **Appendix B**)

5.2.3.1 Tie Bids: When purchasing commodities and services of \$25,000 or less, occasionally two (2) or more bids of equal terms and amount are received in response to a solicitation, thus, resulting in a *tie bid*. If multiple awards are not made, the tie bid(s) must be resolved. When tie bids are received, the Purchasing Director shall break the tie by allowing the tied vendors to make a final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent by the Director. A witness must be present when resolving the tie and documentation of the method and results, with signatures of all witnesses, must also be included in the file. Vendors affected by the tie should be notified and given an opportunity to attend the tie breaker.

5.2.3.2 Errors in Bids: The Purchasing Division's **West Virginia Code of State Rules** guides the division in cases of errors in bids for purchases over \$25,000. It is recommended that agencies follow these procedures when processing delegated purchases (\$25,000 or less).

If an error is discovered by the agency or the Purchasing Division, the burden of proof and timely action for request of relief is the vendor's responsibility. The request for relief must be made in writing by the vendor and should be received by the agency within five (5) working days from the bid opening date.

Erroneous bids may be rejected after the bid opening if all the following reasons are met:

- (1) An error was made;
- (2) The error materially affected the bid;
- (3) Rejection of the bid would not cause a hardship on the state agency involved other than losing an opportunity to receive commodities and services at a reduced cost; and
- (4) Enforcement of the part of the bid in error would be unconscionable.

In order to reject a bid, the public file must contain documented evidence that all of the above conditions exist. The vendor must specifically identify the error(s), and provide documentation to substantiate the claim that the error(s) materially affected the bid and enforcement of the part of the bid in error would be unconscionable.

The unit price prevails if there is an error in the extension.

5.3 Receiving Procedures: In accordance with the West Virginia State Auditor's receiving report requirements (*West Virginia Code of State Rules*, §155-1-4), materials must be opened and inspected within 24 hours of receipt, otherwise the state agency may be subject to difficulty in obtaining an adjustment. Agencies must verify the shipment against the specifications in the purchase order and retain a copy of the receiving report prepared for the Auditor's office with the purchasing file. For receipt of services, a receiving report similar in form to that required by the Auditor's office shall be completed, signed and retained with the purchasing file.

In cases where receiving reports are retained by another office of the spending unit and the volume of receiving reports would create a storage problem, spending units may include a memorandum to file in the purchasing file indicating the storage location of the receiving reports. The actual reports shall be produced on demand, in accordance with the *West Virginia Code of State Rules*, §148-1-4.14.

Agencies must verify quantities received. [If quantities do not match the purchase order, insist on a correction of the packing slip. After all corrections have been made, request that the driver sign all shipping documents before leaving. Do not accept any alternate or substitution without Purchasing Division's approval of commodities and services awarded by the Purchasing Division.]

Several days before the promised delivery of a commodity, the agency should follow-up with the vendor to determine if the promised delivery date will be met. Concurrently, the needs of

the end-user in the organization should be monitored to determine the difficulties that may occur if delivery is delayed. It should also be determined from the vendor, during the follow-up procedure, as to the method of shipment to be used - *motor freight, parcel post or other carrier*. The name of the carrier, expected date and time of delivery and pro-number on the bill of lading should be obtained prior to shipment from the vendor.

5.3.1 Inspection: In accordance with **West Virginia Code** §5A-3-9, the Purchasing Director reserves the right to inspect the commodities delivered or services rendered to assure conformance with contractual requirements. The agency shall perform this inspection on all delivered commodities and services. Nonconformity is to be reported to the Purchasing Director and the chief officer of the spending unit purchasing such commodities for remedial action.

5.3.2 Proper Receiving Techniques: Any person receiving commodities is responsible for performing all of the inspection steps described below.

Receipt of Commodities and Services

The state agency shall check the shipment to determine if commodities are in conformance with the purchase order or contract and verify the following:

Commodities:

The make, model number, brand name and general description of the item(s) received match the specifications on the purchase order.

The quantity received agrees with the purchase order quantity, packing list and bill of lading. An actual count is necessary to assure receipt of all items.

Services:

Labor services must match the frequency (*daily, weekly, monthly, etc.*) and duration (*number of hours, days, etc.*) described in the purchase order or contract (*janitorial, security, etc.*).

Service contracts that require the vendor to provide consultant reports, audit reports, statistics or recommendations must be as specified in the purchase order or contract.

Service contracts that require the vendor to perform a particular service, such as elevator maintenance or carpet cleaning, must have all tasks completed as described in the purchase order or contract.

5.3.3 Freight Terminology and Loss/Damage: Freight or shipping terms should always be included in a contract. Purchase orders should have a specified point of origin and destination. Misunderstanding of the freight terms may cause problems in the receiving end of the purchase. In accordance with the National Institute of Governmental Purchasing's (NIGP) Public Procurement Dictionary of Terms (2008), the definitions for Free on Board (F.O.B.) Destination and Free on Board (F.O.B.) Origin are noted as follows:

Free on Board (F.O.B.) Destination: Where the seller or consignee delivers the materials to a specified delivery point. The cost of shipping and the risk of loss are borne by the seller or consignee. Title passes when delivery is received by the buyer at destination. Seller has total responsibility until shipment is delivered. This is the preferred method of shipment as it easily facilitates a comparison of price among multiple vendors.

Free on Board (F.O.B.) Origin: Title is transferred from seller to buyer at the origin of the shipment. Buyer owns the goods in transit and files any claims. Buyer has total responsibility. The payment of the freight charges is determined by contract terms. Any use of this delivery method requires that the price evaluations account for delivery costs to ensure an accurate price comparison.

Loss or Damage in Shipment: Filing of claims for loss or damage to merchandise in shipment is the responsibility of the party having title to merchandise during shipment. The title to the commodities is determined by the FOB point on the purchase order.

FOB Destination: Title remains with vendor until goods are received and accepted by the state agency. Damage during shipment must be resolved by the seller.

If the damage is obvious note all losses or damages on receiving papers, sign and have driver sign. Write the word "Refused" on receiving papers. Do not accept merchandise with obvious damage from carrier under any circumstances. If the damage or loss becomes evident when uncrating, stop uncrating and retain all merchandise and crating in exactly the same condition in which it was received. Notify the vendor immediately in writing and by telephone. Do not use any of the merchandise and do not destroy any packaging material.

FOB Shipping Point: Title passes to the state agency immediately when goods are given to a common carrier at the time of shipment. The state agency is responsible for any and all damages or losses while merchandise is in transit. If damages occur to merchandise in shipment, it is the state agency's responsibility to file a claim on behalf of the state.

If there is obvious loss or damage, note all losses or damages on receiving papers, sign and have driver sign. Retain all merchandise in the condition in which it was received and notify both the carrier and seller in writing and by telephone within five (5) working days. The carrier will send a representative to investigate the claim.

If the damage or loss becomes evident when uncrating stop uncrating and retain all merchandise and crating in exactly the same condition in which it was received. Notify the vendor immediately in writing and by telephone. Do not use any of the merchandise and do not destroy any packaging material.

5.4 Payment Process: To promote good public relations state agencies should establish internal procedures to expedite payment of vendor's invoices. Please refer to the Payment Processing Guide issued by the State Auditor's Office (304-558-2261) for all questions regarding invoice processing.